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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMERON ANTHONY  
FRAZIER,

Defendant and Appellant.

B284280

(Los Angeles County  
Super. Ct. No. SA092057)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kathryn A. Solorzano, Judge. Affirmed in part and remanded with directions.

Victoria H. Stafford, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Jaime L. Fuster and Joseph P. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant and appellant Cameron Anthony Frazier of first degree murder (Pen. Code, § 187, subd. (a); count 1),<sup>1</sup> two counts of attempted second degree robbery (§§ 213, subd. (b), 664, 211; counts 2 and 3), and assault with a semiautomatic firearm (§ 245, subd. (b); count 4). The jury found true the special circumstance allegation that the murder was committed while defendant was engaged in the commission of an attempted robbery (§ 190.2, subd. (a)(17)). The jury also found true enhancement allegations that defendant personally used a firearm within the meaning of section 12022.53, subdivision (b), as to counts 1 through 3, and within the meaning of section 12022.5 as to count 4.

On count 1, defendant was sentenced to life without the possibility of parole (LWOP), as well as 10 years for the firearm enhancement. On each of counts 2 and 3, defendant received 13 years, comprised of the three-year high term for the attempted robbery plus the 10-year firearm enhancement. On count 4, defendant received 19 years, comprised of the nine-year high term for the assault plus the 10-year firearm enhancement. The trial court ordered the terms on counts 3 and 4 to run concurrently with all other counts. The sentence on count 2 was stayed pursuant to section 654.

In this timely appeal, defendant argues that his LWOP sentence is unconstitutional under the Eighth and Fourteenth Amendments and that, pursuant to Senate Bill Number 620 (2017-2018 Reg. Sess.) (SB 620), the matter must be remanded

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

for the trial court to exercise its new discretion to consider striking the firearm enhancements.

We agree that remand for resentencing is appropriate in light of SB 620. In all other respects, however, we affirm the judgment.

### **BACKGROUND**

On January 6, 2016, Tyler Odom (Odom) drove to Jerry's Deli in Marina del Rey to sell two pounds of marijuana to a prospective buyer. The transaction had been arranged through text messages, and the buyer had provided Odom a copy of a physician's recommendation for medical marijuana and a photo identification. Odom was accompanied by his fiancée, Lacey Carman (Lacey), who rode in the front passenger seat, and Lacey's 17-year-old sister, Kristine Carman (Kristine),<sup>2</sup> who was seated in the back.

When they arrived, Odom exited his car and saw defendant, who had been standing in front of Jerry's Deli, rapidly approach him. Because defendant did not look like the man Odom was expecting to meet, Odom said, "I'm not supposed to be meeting you." Defendant told Odom that he had a gun and would "put a bullet in [his] head" if Odom did not give him everything he had in his car. Odom tried to convince defendant to put his gun away, telling him, "Hey, man, just take it easy. I'll give you whatever you want. . . . I got my family in the car. . . ." But defendant came closer, pushing his gun into Odom's stomach. Defendant grabbed Odom's shirt and began to drag him toward a

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<sup>2</sup> Because Lacey and Kristine share the same last name, we refer to them by their first names. This is done for clarity; we intend no disrespect.

gas station. Odom “broke free” and began to run away. Odom heard a shot being fired and felt a bullet go by him. He heard two more shots.

As Odom fled, defendant approached the car and grabbed the handle of the driver’s door, but Kristine had locked it. Lacey climbed from the front passenger seat to the driver’s seat. She put the car in reverse, looked back through the window, and saw that the glass had shattered and that defendant was holding a gun.

Lacey continued driving in the parking lot to get away from defendant and to find Odom. When she eventually pulled over, Lacey saw that Kristine, still in the back seat, “was bleeding everywhere.” Kristine had sustained a fatal gunshot wound to the head.

## **DISCUSSION**

### **I. Defendant’s LWOP Sentence Is Constitutional.**

Defendant argues that his LWOP sentence violates the Eighth and Fourteenth Amendments because the felony-murder special circumstance on which the sentence is based does not meaningfully narrow the class of persons subject to it. Although acknowledging that our Supreme Court has repeatedly rejected such an argument, defendant contends that the issue has not yet been considered in the context of the recent changes to the felony-murder laws pursuant to Senate Bill Number 1437 (2017-2018 Reg. Sess.) (SB 1437). This argument lacks merit.

First, as defendant concedes, the constitutionality of the felony-murder special circumstance has been consistently upheld by our Supreme Court. (*People v. Covarrubias* (2016) 1 Cal.5th 838, 934.) We are bound by this precedent. (*Auto Equity Sales*,

*Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.)

Second, “[SB] 1437 was enacted to ‘amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.’ [Citation.]” (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.) SB 1437 is thus wholly inapplicable here because, as defendant again concedes, he was the “actual killer.”

Third, the Eighth Amendment’s “narrowing requirement”—which “require[s] States to limit the class of murderers to which the death penalty may be applied” (*Brown v. Sanders* (2006) 546 U.S. 212, 216)—is not applicable here where a death sentence was not imposed. (See *Gonzalez v. Prunty* (C.D. Cal. 1997) 959 F.Supp. 1264, 1273 [“[W]hile capital punishment is unique and must be treated specially, mandatory life imprisonment without parole is . . . only an outlying point on the continuum of prison sentences,’ and there is no basis for applying a narrowing requirement to . . . an LWOP sentence. [Citation.]”]; see also *Harmelin v. Michigan* (1991) 501 U.S. 957, 995–996 [refusing to extend the “individualized capital-sentencing doctrine[]” to LWOP sentences].)

Accordingly, we affirm defendant’s LWOP sentence.

## **II. The Matter Must Be Remanded for the Trial Court to Exercise Its New Discretion to Consider Striking the Firearm Enhancements.**

At the time of defendant’s sentencing in 2017, trial courts had no discretion to strike firearm enhancements under sections

12022.5 and 12022.53. (*People v. Zamora* (2019) 35 Cal.App.5th 200, 208 (*Zamora*).) That changed while this appeal was pending.

SB 620, effective January 1, 2018, amended “sections 12022.5 and 12022.53, which set forth firearm enhancements, so that the [trial] court may now, in its discretion, strike the enhancements in the interests of justice. [Citations.]” (*People v. Phung* (2018) 25 Cal.App.5th 741, 762–763; see also §§ 12022.5, subd. (c), 12022.53, subd. (h).) SB 620 applies retroactively to nonfinal convictions. (*Zamora, supra*, 35 Cal.App.5th at p. 208.)

Because the trial court did not clearly indicate whether it would strike the firearm enhancements if it had discretion to do so, we agree with the parties that the matter must be remanded for the court to consider exercising its new discretion pursuant to SB 620. (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 423 (*McDaniels*) [holding that remand required where the “the record contains no clear indication that the trial court will not exercise its discretion to reduce [the defendant’s] sentence” by striking a firearm enhancement].)<sup>3</sup>

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<sup>3</sup> We recognize that, because we are affirming defendant’s LWOP sentence, striking the firearm enhancements would have no practical effect. “But the length of any potentially reduced sentence says nothing about the trial court’s intent, and even a very long reduced sentence may someday be further reduced through other avenues of postconviction relief or retroactive legislative changes. A remand for resentencing is not an idle act just because a defendant may not derive a present practical benefit should the trial court exercise its discretion in the defendant’s favor.” (*McDaniels, supra*, 22 Cal.App.5th at p. 427.)

### **DISPOSITION**

The matter is remanded for resentencing pursuant to sections 12022.5, subdivision (c), and 12022.53, subdivision (h), as amended by SB 620. The judgment is affirmed in all other respects.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
HOFFSTADT